Department of Health & Human Services
Centers for Medicare & Medicaid Services
233 North Michigan Avenue, Suite 600
Chicago, Illinois 60601-5519

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Refer to: MMW3

June 4, 2003

Mary B. Kennedy, Medicaid Director
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. Kennedy:

We have reviewed Minnesota's Elderly Home and Community Based Services (HCBS) Waiver Renewal #0025.91.R4. This renewal adds transitional services and a consumer-directed service option, Consumer Directed Community Supports (CDCS) to the waiver. It also includes technical revisions and updated forms. We have determined that there are areas that must be clarified before final disposition can be taken on this amendment. The additional information that is needed is as follows.

1. A conference call was held on April 24, 2003 to discuss the State's CDCS proposal for all five waivers, including the Elderly waiver. The following were identified as outstanding issues:

   a) CMS cannot accept the state's proposal to supply goods and services to unpaid caregivers as written. According to statute, Medicaid cannot provide payment for goods and services for someone other than the beneficiary. During the call, CMS presented the State with an alternative method for this proposal. Please revise the references to this proposed CDCS service to reflect the alternative method.

   b) According to the State, provider qualifications determined at the case level will afford greater practicability as well as enhanced participant protection. The proposed role of the local agency appears to provide for participant protection. However, the description of the recipient's role in designing the community support plan does not appear to allow any party to influence the plan. Please revise the language in Appendix B-1 under CDCS to indicate the process by which self-direction is balanced with the local agency and provider's ability to influence participant protections, particularly to insist on adequate provider qualifications.

   c) Federal policy does allow payment to legally responsible family members under certain conditions. The conditions are (1) the family member providing care must meet established provider qualifications, (2) the State must establish a methodology for determining that the care provided exceeds what the family member is legally responsible to provide, and (3) the services provided by family members must be no more costly than those provided by traditional/agency providers. Please explain the State's methodology for determining that the care provided by family members exceeds what they are legally responsible to provide. Also, please revise the waiver to indicate the conditions under which payment to family members will be allowed.

    d) Please define the process by which criminal background checks will be billed.

2. In Appendix B-1, page 34, the State lists personal items as a transitional service. Personal items cannot be purchased as a transitional service but are an individual expense. Please revise this language.

3. There are mathematical errors in the year five CDCS and transitional services cost estimates listed in Appendix G. Also as previously discussed, these cost estimates must be broken down to reflect costs under each CDCS service category. Please review and revise.

As you are aware, under section 1915(f) of the Social Security Act, a HCBS waiver must be approved, disapproved, or additional information requested within 90 days of receipt, or the request will be deemed approved. The 90th day for this renewal is June 25, 2003. This request constitutes a formal request for additional information and stops the 90-day clock. Upon receipt of the State's response to this request, a new 90-day clock will begin.

If you have any questions regarding this request for additional information, please contact Alice Wiley at (312) 353-1582.

                    Sincerely,

                    /s/ by RAH
                    Cheryl A. Harris
                    Associate Regional Administrator
                    Division of Medicaid and Children's Health

cc: Mary Jean Duckett, CMS